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 10 *Counsel for Proposed Lead Plaintiffs*

11 *Andrew Walter and James Forseth*
 and Proposed Lead Counsel

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 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**
 15 **OAKLAND DIVISION**

16 RALPH WILDER, Derivatively on Behalf of SONIC SOLUTIONS, INC.)	Case No. C 07-cv-1500-CW
17 Plaintiff,)	AMENDED NOTICE OF MOTION AND AMENDED MOTION TO CONSOLIDATE RELATED ACTIONS, APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF
18 v.)	
19 ROBERT J. DORIS, MARY C. SAUER, JAMES A. MOORER, MICHAEL C. CHILD, ROBERT M. GREBER, PETER J. MARGUGLIO, R. WARREN LANGLEY, A. CLAY LEIGHTON, KIRK PAULSEN, MICHAEL J. COSTELLO and CHRISTOPHER A. KRYZAN,)	Date: August 2, 2007
20)	Time: 2:00 p.m.
21)	Courtroom: 2, 4 th Floor
22)	Judge: Claudia Wilken
23 Defendant,)	
24 and)	
25 SONIC SOLUTIONS, INC.)	
26)	
27 Nominal Defendant.)	

28 AMENDED NOTICE OF MOTION AND AMENDED MOTION TO CONSOLIDATE RELATED
 ACTIONS, APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL; MPA IN SUPPORT THEREOF
 Case No. C 07-cv-1500-CW

To be consolidated with:

ANDREW WALTER, Derivatively on
Behalf of Nominal Defendant SONIC
SOLUTIONS, Plaintiff,
v.
ROBERT J. DORIS, MARY C. SAUER,
JAMES A. MOORER, MICHAEL C.
CHILD, ROBERT M. GREBER, PETER J.
MARGUGLIO, R. WARREN Langley,
A. CLAY LEIGHTON, KIRK PAULSEN,
MICHAEL J. COSTELLO and
CHRISTOPHER A. KRYZAN,
Defendant,
and
SONIC SOLUTIONS,
Nominal Defendant.
Case No.: 07-02344-CW

To be consolidated with:

JAMES FORSETH, Derivatively on)
Behalf of Nominal Defendant SONIC)
SOLUTIONS,) Case No.: 07-03178-CW
Plaintiff,)
v.)
ROBERT J. DORIS, MARY C. SAUER,)
JAMES A. MOORER, MICHAEL C.)
CHILD, ROBERT M. GREBER, PETER J.)
MARGUGLIO, R. WARREN LANGLEY,)
A. CLAY LEIGHTON, KIRK PAULSEN,)
MICHAEL J. COSTELLO and)
CHRISTOPHER A. KRYZAN,)
and)
SONIC SOLUTIONS,)
Nominal Defendant.)

To be consolidated with:

SAMMY K. DOLITTLE, Derivatively on)
Behalf of Nominal Defendant SONIC)
SOLUTIONS,) Case No.: 07-03361-BZ
Plaintiff,
v.
ROBERT J. DORIS, DAVID C. HABIGER, MARY)
C. SAUER, A. CLAY LEIGHTON, MARK ELY,)
ROBERT M. GREBER, PETER J. MARGUGLIO,)
and R. WARREN LANGLEY,)
and)
SONIC SOLUTIONS,)
Nominal Defendant.)

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 2, 2007, at 2:00 p.m. or as soon thereafter as the matter can be heard by the Honorable Claudia Wilken, 1301 Clay Street, Courtroom 2, 4th Floor, Oakland, CA 94612, Derivative Plaintiffs Andrew Walter ("Mr. Walter") and James Forseth ("Mr. Forseth") will, and hereby do, move this court for an order to (i) consolidate related actions; (ii) appoint Andrew Walter and James Forseth as Lead Plaintiffs; and (iii) appoint Andrew Walter and James Forseth's counsel, Schiffriin Barroway Topaz & Kessler, LLP ("Schiffriin Barroway"), as Lead Counsel.

Dated: July 10, 2007

SCHIFFRIN BARROWAY
TOPAZ & KESSLER, LLP

PLutzik, Bramson, Fisher, Inc.
Alan R. Plutzik, Of Counsel (Bar No. 077785)
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AMENDED NOTICE OF MOTION AND AMENDED MOTION TO CONSOLIDATE RELATED ACTIONS, APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL; MPA IN SUPPORT THEREOF
Case No. C 07-cv-1500-CW

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*Counsel for [Proposed] Lead Plaintiffs
Andrew Walter and James Forseth
and [Proposed] Lead Counsel*

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AMENDED NOTICE OF MOTION AND AMENDED MOTION TO CONSOLIDATE RELATED ACTIONS, APPOINT LEAD PLAINTIFFS AND LEAD COUNSEL; MPA IN SUPPORT THEREOF
Case No. C 07-cv-1500-CW

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Proposed Derivative Lead Plaintiffs, Andrew Walter (“Mr. Walter”) and James Forseth (“Mr. Forseth”) submit this amended motion to (i) consolidate related actions; (ii) appoint Andrew Walter and James Forseth as Lead Plaintiffs; and (iii) appoint Andrew Walter and James Forseth’s counsel, Schiffрин Barroway Topaz & Kessler, LLP (“Schiffрин Barroway”), as Lead Counsel.

II. BACKGROUND AND PROCEDURAL HISTORY¹

This is a shareholders derivative action brought on behalf of Nominal Defendant Sonic Solutions (“Sonic” or the “Company”) against certain members of its Board of Directors (the “Board”) and certain of its executive officers seeking to remedy defendants’ breaches of fiduciary duties, unjust enrichment, statutory violations, and other violations of law. For at least nine years, Sonic’s directors, along with its top executive officers, engaged in a secret scheme to grant undisclosed, “in the money” stock options to themselves and others by backdating stock option grants to coincide with low closing stock prices. In fact, in a distinctive pattern, for nine consecutive years, from 1995 to 2003, the defendants backdated stock option grants. Moreover, twelve out of the Company’s fifteen stock option grants (80%) from 1995 to 2003 were backdated, all of which were granted to top Sonic executives. By engaging in this scheme, the defendants were able to conceal that Sonic was not recording material compensation expenses and was materially overstating the Company’s net income or materially understating its net loss from at least 1995 to 2003. Moreover, by granting stock options such that they carried a strike price lower than the closing price of the stock on the date of grant, certain defendants profited immediately upon the award of the stock options without doing anything to improve the Company’s business or financial condition. By contrast, Sonic has suffered, and will continue to

¹ On May 10, 2007, Proposed Derivative Lead Plaintiff, Andrew Walter filed a Motion to Consolidate Actions, Appoint Lead Plaintiff and Lead Counsel, Case No 07-1500-CW, Docket No. 11 (“Initial Motion”).

1 suffer, significant financial and non-monetary damages and injuries.

2 **III. THE COURT SHOULD CONSOLIDATE THE RELATED ACTIONS**

3 The Proposed Derivative Lead Plaintiffs requests that the following actions (hereafter,
 4 collectively referred to as “the Related Derivative Actions”) be consolidated:

<u>Case Name</u>	<u>Case No.</u>	<u>Filing Date</u>
<i>Ralph D. Wilder v. Robert J. Doris, et. al.</i>	C07-cv-1500-CW	March 15, 2007
<i>Andrew Walter v. Robert J. Doris, et. al.,</i>	C07-cv-2344-CW	April 30, 2007
<i>James Forseth v. Robert J. Doris, et. al.,</i>	C07-cv-03178-CW	June 15, 2007
<i>Sammy K. Dolittle v. Robert J. Doris, et. al.,</i>	C07-cv-03361-BZ	June 26, 2007

13 The consolidation of actions in federal court is governed by Rule 42 of the Federal Rules
 14 of Civil Procedure which provides:

15 When actions involving a common question of law or fact are pending before the
 16 court, it may order a joint hearing or trial of any or all the matters in issue in the
 17 actions; it may order all the actions consolidated; and it may make such orders
 concerning proceedings therein as may tend to avoid unnecessary costs or delay.

18 Fed.R.Civ.P. 42(a). *See also Erikson v. Cornerstone Propane Partners LP*, 2003 U.S. Dist.
 19 LEXIS 18009 at *7 (N.D. Cal. 2003) (“Rule 42(a) empowers the court to consolidate “actions
 20 involving a common question of law or fact”). This Court has broad discretion under this rule to
 21 consolidate cases pending within the District. *Abate v. Lewis*, 1996 U.S. App. LEXIS 639, at
 22 *16 (9th Cir. 1996) (citations omitted).

23 Here, consolidation of the Related Derivative Actions is warranted as both of these
 24 actions are dependant on proof of the same facts; specifically, whether Sonic’s Board of
 25 Directors improperly authorized the backdating of stock options awarded to top company
 26 executives. Since the Related Derivative Actions currently pending before this Court present
 27 virtually identical factual and legal issues, involve the exact same Defendants, and will involve
 28

1 the same discovery, consolidation is appropriate. *See Rendon v. City Of Fresno*, 2006 U.S. Dist.
 2 LEXIS 41140, at * 17 (E.D. Cal. June 2, 2006) (two civil rights cases alleging police use of
 3 excessive force were consolidated even though there would be different factual issues at trial);
 4 *See also Millman v. Brinkley*, 2004 U.S. Dist. LEXIS 20113, at *7 (N.D. Ga. Oct. 1, 2004)
 5 (consolidating derivative actions where the same defendants were alleged to have committed the
 6 same acts and caused the same damage to the same company during the same time period).
 7 Indeed, if not consolidated, the ensuing separate derivative actions will result in virtually
 8 identical discovery requests, motions practice, and the like, and will thus cause an unnecessary
 9 drain on judicial resources.

10 Moreover, Defendants will suffer no prejudice by litigating one consolidated action rather
 11 than two separate suits. Indeed, consolidation would ensure that this litigation, brought for the
 12 benefit of the Company, is disposed of in the most cost-effective manner for the Company. *See*
 13 *Id.* (consolidation of derivative actions is particularly appropriate because the “cost of defending
 14 these multiple actions may well do serious harm to the very corporation in whose interest they
 15 are supposedly brought”). Consolidation would therefore inure to the benefit of all parties
 16 involved.

17 **IV. MR. WALTER AND MR. FORSETH SHOULD BE APPOINTED AS LEAD
 18 PLAINTIFFS**

19 As the Supreme Court recognized in *Cohen v. Beneficial Loan Corp.*, 337 U.S. 541
 20 (1949), a plaintiff who leads a shareholder’s derivative suit occupies a position “of a fiduciary
 21 character,” in which “[t]he interests of all in the redress of the wrongs are taken into his hands,
 22 dependent upon his diligence, wisdom and integrity.” *Id.* Additionally, Rule 23.1 of the Federal
 23 Rules of Civil Procedure provides that a plaintiff must fairly and adequately represent the
 24 interests of the shareholders in enforcing the rights of the corporation. Thus, when considering
 25 the appointment of lead plaintiffs in shareholder derivative actions, courts look to which
 26 shareholders will adequately serve the interests of the derivative plaintiffs and the nominal
 27 defendant. *See In re Chordiant Derivative Litigation*, Master File No. C 06-04671 JW (Nov. 27,
 28

1 2006 N.D. Ca.) (Order) (appointing lead plaintiff and Schiffрин Barroway as lead counsel in
 2 derivative litigation and citing Rule 23.1 as a guideline to use when appointing lead plaintiff in a
 3 derivative action)²; *see also Millman*, 2004 U.S. Dist. LEXIS 20113, at *8; *Dollens v. Zions*
 4 2001 U.S. Dist. LEXIS 19966, at *5 (N.D. Ill. Dec. 4, 2001) (“courts should appoint a derivative
 5 plaintiff that’s likely to benefit the plaintiffs the most”).

6 Mr. Walter and Mr. Forseth clearly satisfy these criteria, as they have been long-term
 7 holders of Sonic stock and currently maintain shares of Sonic stock. Further, Mr. Walter and Mr.
 8 Forseth have retained competent and experienced counsel as proposed Lead Counsel, the law
 9 firm of Schiffрин Barroway. Therefore, for all of the foregoing reasons, Mr. Walter and Mr.
 10 Forseth should be appointed as Lead Plaintiffs and their counsel, Schiffрин Barroway, should be
 11 appointed as Lead Counsel.

12 **V. THE COURT SHOULD APPOINT LEAD COUNSEL**

13 **A. Appointment of Lead Counsel is Necessary to Effectively
 14 Prosecute the Consolidated Action**

15 A court which has consolidated actions may at its discretion, appoint Lead Counsel to
 16 prosecute the consolidated cases. Charles Alan Wright and Arthur R. Miller, *Federal Practice*
 17 and *Procedure* § 2385 (2d ed. 1987) cited in *Walker v. Deutsche Bank, AG*, 2005 U.S. Dist.
 18 LEXIS 19776, at * 8 (S.D.N.Y. Sept. 6, 2005). *MacAlister v. Guterman*, 263 F.2d 65 (2d Cir.
 19 1958) is the seminal case on this point. In that case, the court recognized that “[t]he benefits
 20 achieved by consolidation and the appointment of general counsel, i.e. elimination of duplication
 21 and repetition and in effect the creation of a coordinator of diffuse plaintiffs through whom
 22 motions and discovery proceedings will be channeled, will most certainly redound to the benefit
 23 of all parties to the litigation.” *Id.* at 69.

25 The Ninth Circuit has explicitly endorsed this reasoning. See *Vincent v. Hughes Air*
 26 *West, Inc.*, 557 F.2d 759, 774-75 (9th Cir. 1977) (affirming district court's appointment of Lead
 27

28 ² Attached hereto as Exhibit A to the Declaration of Robin Winchester in Support of the Amended Motion to
 Consolidate Related Cases, Appoint Lead Plaintiff, and Lead Counsel (“Winchester Decl.”).

1 Counsel, stating that “[t]he authority recognized in MacAlister has never been seriously
 2 disputed”). Moreover, the Manual for Complex Litigation recognizes the benefits of appointing
 3 Lead Counsel in complex, multiparty litigation:

4 Complex litigation often involves numerous parties with common or similar
 5 interests but separate counsel. Traditional procedures in which all papers and
 6 documents are served on all attorneys, and each attorney files motions, presents
 7 arguments, and examines witnesses, may waste time and money, confuse and
 8 misdirect the litigation, and burden the court unnecessarily. Instituting special
 9 procedures for coordination of counsel early in the litigation will help to avoid
 10 these problems.

11 *Manual for Complex Litigation (Fourth)* §10.22 (2004).

12

13 **1. Schiffrin Barroway Should be Appointed as Lead Counsel**

14

15 In selecting Lead Counsel, the “guiding principle” is who will “best serve the interest of
 16 the plaintiffs.” *Millman*, 2004 U.S. Dist. LEXIS 20113, at * 9. The criteria for selecting counsel
 17 include factors such as “experience and prior success record, the number, size, and extent of
 18 involvement of represented litigants, the advanced stage of proceedings in a particular suit, and
 19 the nature of the causes of action alleged.” *Id.* (citations omitted). In addition, courts have also
 20 considered the quality of the pleadings that have been filed as a factor to be weighed. *Millman*,
 21 2004 U.S. Dist. LEXIS 20113, at * 9. Each of these factors weighs in favor of appointing
 22 Schiffrin Barroway as Lead Counsel.

23

24 **a. Schiffrin Barroway’s Experience and Prior
 25 Success is Unassailable**

26

27 Schiffrin Barroway is a Martindale Hubbell “AV” rated law firm which has focused its
 28 practice in the securities fraud class action and shareholder derivative areas over the past 20
 29 years. See Schiffrin Barroway Firm Biography.³ With more than 60 attorneys specializing in
 30 complex shareholder litigation, Schiffrin Barroway has served as Lead or Co-Lead Counsel in

28 ³ Attached hereto as Exhibit B to Winchester Decl.

1 numerous securities and complex litigation matters, including serving as Lead or Co-Lead
 2 Counsel in more than 150 shareholder derivative actions in state and federal courts across the
 3 country. In addition to the significant recoveries that Schiffрин Barroway has achieved on behalf
 4 of shareholders in securities fraud cases, they have had similar success in shareholder derivative
 5 litigation.

6 As Lead Counsel in *Klotz v. Parfet, et al.*, Case No. 03-06483-CK (Jackson County, MI
 7 2001), Schiffрин Barroway achieved a settlement in which CMS Energy Corporation recovered a
 8 cash payment of \$12 million from its directors' and officers' liability insurance and instituted a
 9 comprehensive overhaul of the Company's corporate governance program. Among other things,
 10 CMS:

- 11 • added five new independent directors, reconstituted the committees of the
 board of directors, and separated the roles of Chairman and CEO;
- 12 • created the position of Chief Compliance Officer to oversee and
 administer the Company's ethics and corporate compliance program;
- 13 • enhanced the responsibilities and procedures of the Audit Committee;
- 14 • adopted an enhanced insider trading policy and stock ownership
 guidelines for officers and directors; and
- 15 • reformed the Company's executive compensation practices by eliminating
 the use of stock options and instituting new performance criteria for cash
 bonuses.

16 As Lead Counsel in *In re Fairchild Corp. Shareholder Derivative Litigation, Consol.*
 17 C.A. No. 871-N (Del. Ch. 2004), Schiffрин Barroway recovered a cash payment of \$3.76 million
 18 from Fairchild's Chairman/CEO and the Company's directors' and officers' liability insurance
 19 and instituted a broad array of corporate governance enhancements. Among other things,
 20 Fairchild:

- 21 • added two new independent directors and adopted policies increasing the
 responsibilities of the independent members of the board;
- 22 • created a new Oversight Committee to oversee and pre-approve related-
 party transactions; and

1 • reformed the Company's executive compensation practices by requiring
 2 that regular and bonus compensation be directly related to the Company's
 3 performance and prohibiting senior executives from receiving non-
 4 compete and consulting payments.

5 These are but a few examples of many in which Schiffrian Barroway, serving in a Lead
 6 Counsel capacity, achieved outstanding results for shareholders in complex derivative
 7 shareholder litigation.

8 **b. Schiffrian Barroway Has Been a Pioneer In
 9 Prosecuting Options Backdating Cases**

10 By way of further example of Schiffrian Barroway's commitment to vigorously serving
 11 the interests of shareholders, the firm has been at the forefront of litigation concerning the
 12 alleged backdating of stock options and is currently serving as lead counsel in numerous
 13 California-based backdating cases as well as the Comverse derivative litigation in New York
 14 state court, widely regarded as one of the most prominent derivative litigations stemming from
 15 alleged backdating by corporate insiders.⁴

16 Thus, in addition to establishing a proven track record of success in shareholder
 17 derivative actions generally, Schiffrian Barroway has also led the way in shareholder derivative
 18 actions alleging the exact conduct that Plaintiffs allege in the instant actions. This breadth of
 19 success should weigh heavily in favor of appointing Schiffrian Barroway as Lead Counsel.
 20 See Manual for Complex Litigation (Fourth) §10.224 (2004) (the court's responsibilities in
 21 appointing Lead Counsel include an assessment of counsel's qualifications, experience,
 22 competence, and commitment to prosecuting action on behalf of plaintiffs).

23
 24 ⁴ See e.g. *In re Actel Derivative Litigation*, Master File No. C 06-06832 JW (N.D. Cal. Jan. 10, 2007) (same)
 25 (attached as Exhibit C to Winchester Decl.); *In re Network Appliance Derivative Litigation*, Master File No. C 06-
 26 06486 JW (N.D. Cal. Jan. 10, 2007)(same) (attached as Exhibit D to Winchester Decl.); *In re Integrated Silicon
 27 Solution, Inc. Shareholder Derivative Litigation*, Master File No. C-06-04387 RMW (N.D. Cal. Aug. 22, 2006)
 28 (same) (attached as Exhibit E to Winchester Decl.); *In re Linear Technology Corporation Derivative Litigation*,
 29 Master File No. C-06-3290 MMC (N.D. Cal. June 13, 2006) (same) (attached as Exhibit F to Winchester Decl.); *In
 30 re Sigma Designs, Inc. Derivative Litigation*, Master File No. C-06-04460 RMW (N.D. Cal. Nov. 16, 2006) (same)
 31 (attached as Exhibit G to Winchester Decl.); *Qualco v. Balakrishnan, et al.*, Master File No. C-06-2811 MHP (N.D.
 32 Cal. Jan. 9, 2007) (same) (attached as Exhibit H to Winchester Decl.).

1 **VI. CONCLUSION**

2 For the reasons set forth above, the Court should grant this Motion and (i) consolidate the
 3 above-captioned related shareholder derivative actions; (ii) appoint Andrew Walter and James
 4 Forseth as Lead Plaintiffs; and (iii) appoint Andrew Walter and James Forseth's counsel,
 5 Schiffрин Barroway, as Lead Counsel.

6 Dated: July 10, 2007

7 Respectfully Submitted,

8 SCHIFFRIN BARROWAY
 9 TOPAZ & KESSLER, LLP

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 28 *Counsel for Proposed Lead Plaintiffs
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